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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/563,556

01/05/2006

Emilio Morini

2541-1040

8623

466 7590 08/18/2008

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EXAMINER

JACYNA, J CASIMER

ART UNIT

PAPER NUMBER

3754

MAIL DATE

DELIVERY MODE

08/18/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/563,556	Applicant(s) MORINI, EMILIO	
	Examiner J. Casimer Jacyna	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/05/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. The disclosure is objected to because of the following informalities: The brief description of the drawings and the detailed description of the preferred embodiment is missing the headings noted in MPEP 608.01(a).

Appropriate correction is required.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Babiol et al. 4,335,815. Babiol discloses a single piece tube 5 of plastic material with a thinned base 3a having a thickness of 0.40 mm. and a height of a 4-5 mm. which is filled through the bottom as claimed and as disclosed on column 2, lines 9-32.

4. Claims 1, 2 and 4-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Iwahashi et al. 2006/0054635. Iwahashi discloses a single piece tube 11 of plastic material with a thinned lateral surface bottom 8 (see paragraph 45) and an external ring reducer as is either 21 or 24 both of which are fitted within through hole 11a. In regard to the method steps of filling the tube, in a product by process claim the process limitations must impart a clear structural limitation on the apparatus wherein the bottle of

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Iwahashi is capable of being filled through the bottom and later sealed. See MPEP 2113.

5. Claims 1, 2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Strazdins 3,648,895. The embodiment of figure 7 of Strazdins discloses a single piece tube 5 of plastic material with a thinned base 24 which is capable of being filled through the bottom as claimed.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Babiol et al. 4,335,815 in view of French 2,850,363. Babiol discloses a dispensing tube with a detachable closure 2 substantially as claimed but does not disclose an external ring reducer. However, figure 3D of French teaches another dispensing tube having an external ring reducer 21 on the opening 29 for the purpose of attaching a tethered closure 38. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the dispenser of Babiol with an external ring reducer as, for example, taught by French in order to attach a tethered closure.

8. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwahashi et al. 2006/0054635. Iwahashi discloses a single piece tube 11 of plastic material with a thinned lateral surface bottom 8 (see paragraph 45) and an external ring reducer as is either 21 or 24 both of which are fitted within through hole 11a. In regard

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to the method steps of filling the tube, in a product by process claim the process limitations must impart a clear structural limitation on the apparatus wherein the bottle of Iwahashi is capable of being filled through the bottom and later sealed. See MPEP 2113. In regard to the specific wall thickness, in view of the disclosure of molding a thinner wall portion as disclosed in Iwahashi, one of ordinary skill in the art would have found any specific wall thickness such as 0.40 mm. to be an obvious design consideration and well within the skill level of one of ordinary skill in the art.

9. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tufts 3,756,729 in view of Babiol et al. 4,335,815. The embodiment of figure 11 of Tufts discloses a single piece dispensing tube 3 with a thinner bottom part surrounding 2 and an external ring reducer 9 located in the through hole substantially as claimed but does not disclose the tube to be made of plastic. However, Babiol teaches another dispensing tube that is made from plastic for the purpose of providing a convenient and well known material from which to manufacture the tube. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the dispenser of Tufts from plastic as, for example, taught by Babiol in order to providing a convenient and well known material from which to manufacture the tube.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Mon. thru Fri. 9AM-5PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/
Primary Examiner, Art Unit 3754